IN THE HIGH COURT OF BOMBAY AT GOA

FIRST APPEAL NO.160 OF 2002

1. Jacinto Minguel De Quadros
   Barretto,
   Near Holy Spirit Church,
   Margao, Goa.

2. Aurura De Carmo Barretto
   Xavier,

3. Custodio Filomeno J.V. Barretto
   Xavier

4. Thelma Amelia De Piedade
   B. Xavier,

5. Aluisio Jacinto Barreto,
   (expired) Lrs. On record
   as Party No.4, 6 and 7).

6. Matilda Filomena O,De
   J. B. Xavier,

7. Jose Antonio M. F. J. B. Xavier,

8. Caitano Custodio N. J. D.
   B. Xavier,

   All resident of Pajifond,
   Margao, Goa.

9. Maria Manuel Barretto Xavier
   H.No.80, Fr. Jose Vaz Square,
   Near Holy Spirit Church,
   Margao, Goa.

10. Maria Paulacina E.M.
    Z. B. Xavier,
    Deceased, through her legal
    representatives,

    a) Dr. Jorge Almeida

b) Cidalia Rosa Paulina
De Lourdes E Bodade

Both R/o "Mitrayu" H.No.154,
Raighavi Estate,Bogmalo Rd.,
Dabolim, Goa.

11.Maria Eugenia De Carmo
B. Xavier,
(expired) Lrs. Brought on record

a) Mr. Mario Salazar Jorge
alias Mario Jorge,

b) Mr. Janico Cristavao Jorge
alias Janio Jorge,
Both residents of Angoddi,
Loutulim, Salcete, Goa. ...Appellants

V e r s u s

1. Haridas Maruti Kamat,

2. Mahadev Maruti Kamat,

3. Balchandra Maruti Kamat,

All residents of H.No.17,
Aquem, Margao, Goa. ...Respondents

Mr. M. S. Usgaonkar, Senior Advocate with Mr. S. Usgaonkar, Advocate for the Appellants.

Mr. S.K.Kakodkar, Senior Advocate with Mr. Joel D'Souza, Advocate for the Respondent Nos.1 to 3.

CORAM : R. M. LODHA &
N. A. BRITTO, JJ.

DATE : 18th October, 2005

JUDGMENT: (Per N. A. BRITTO, J)

This appeal is directed against Judgment/Award dated 18.3.02 of the learned IInd Additional District Judge, Margao (Reference Court, for short).

2. The dispute between the appellants and the respondents is regarding the receipt of compensation of Rs.14,33,618/- due and payable on account of acquisition of an area of 14,764 sq. metres of Chalta no.14 of P.T. Sheet no.225 of Margao City Survey, forming part of lote no.45 belonging to the Comunidade of Aquem known as 'Rumboleachem Contoleavelem Bhat', which was acquired by virtue of notification issued under Section 4(1) of the Land Acquisition Act, 1894 and published on Gazette dated 26.3.87.

3. The appellants claim the said compensation through their paternal grandmother Maria Paulacina Eugenia de Quadros who was the original encroacher/usurper of the said land of Comunidade, whilst the respondents claim the same through their father Maruti Kamat.

4. The case of the appellants before the Reference Court

was that the said property originally belonged to the Comunidade of Aquem and subsequently recognized as belonging to their grandmother, the said Maria Paulacina who had left behind her two sons namely, Jacinto Rozendo Barretto Xavier and Aluisio Caitano Barretto Xavier. The appellants had stated that the said property was shown as lote no.45 in the plan of the Comunidade of Aquem and had stood registered under no. 8735 in the name of their said grandmother Maria Paulacina and that they were possessing the same since the time of their said grandmother for the last more than 50 years with all necessary requisites and they had acquired the same by way of prescriptive title which they invoked for legal purpose. It was their case that in the southern portion of the said property, there was their old house occupied partially by the family of late Maruti Kamat (chalta no.15) and by late Raghuvir Raikar (chalta no.16) who were their mundkars. The appellants stated that the southern portion of their property was not the subject of the said acquisition but it is the northern portion which was the subject of acquisition to which neither the said Kamat family nor the Raikar family had any right or interest and therefore the compensation of the acquired land in the proportion of ¾th be paid to the appellants, who are the legal heirs of Jacinto

Rozendo Barretto Xavier and 1/4th to the legal heirs of Aluisio Caitano Barretto.

The appellants had filed separate written statements.

5. On the other hand, it was the case of the respondents that the acquired land alongwith the adjoining land originally belonged to the Comunidade of Aquem but the same was in exclusive possession and enjoyment of the family of the respondents for more than 75 years. It was their case that their grandfather and their father Maruti Kamat had acquired the possession of the acquired land alongwith the adjoining land more than 75 years back and since then the family of the respondents had been in possession and enjoyment of the same as their own property and that their residential house was situated in the adjoining land where there was a cowshed and a kitchen garden too and they cultivated vegetables, paddy and other crops in the acquired land as well as in the adjoining land and except for chalta no.42 of P.T. Sheet no.222, the whole land was exclusively possessed and enjoyed by the respondents was covered under chalta nos.14, 15 and 16 of P.T. Sheet no.225 of the said City survey and the acquired land was in chalta no.14.

The respondents claimed that they had claimed ownership of the said land i.e. of the acquired land and the adjoining land by prescription and/or long possession and enjoyment and the Comunidade of Aquem had not obstructed the said possession and enjoyment of the family of the respondents and the respondents being exclusive owners of the acquired land were entitled for the compensation awarded in respect of the same and that the appellants had no right, title or interest in the acquired land and their claim was false and baseless and therefore their claim was liable to be rejected.

6. The learned Reference Court framed one issue namely, which of the parties and in what proportion the compensation awarded was to be apportioned, and, by judgment/award dated 18.3.02 came to the conclusion that since both the parties had not proved their title to the property and since the family of the respondents were in possession of the acquired land prior to acquisition, they were entitled to receive the said compensation.

7. As already stated, the subject matter of acquisition is chalta no.14 of P.T. Sheet no.225 being the northern portion of the said lote no.45 and not the southern portion where the house

claimed by the appellants to be belonging to them and which is presently occupied by the family of the respondents and the family of Aw.2/Shivanand Raikar in respect of which the latter has been declared as a mundkar, is situated.

8. Although both the parties had claimed prescription against the Comunidade of Aquem, the respondents at the time of recording of evidence, through the evidence of Haridas Kamat had stated that he did not know to whom the land belonged prior to 1910, but the acquired land belonged to them since they were in possession of the same. It was submitted on behalf of the respondents by Shri Kakodkar, the learned Senior Counsel, that the respondents were not bound by the written statement filed in the proceedings because law did not enjoin the respondents to file a written statement to prove their claim for compensation. Admittedly, the respondents had not taken a plea of prescription qua the appellants. Section 53 of the Land Acquisition Act, 1894 states that the Code of Civil Procedure will apply to proceedings before the Court save in so far as the provisions of the Code of Civil Procedure are inconsistent with anything contained in the said Act. There can be no dispute that a reference under Section 30 the said Act are civil proceedings.

The nature of this proceedings as has always been understood is that they are in the nature of a interpleader's suit. The Full Bench of the Kerala High Court in the case of **Thevaril Ranee Sidhan and another v. The Special Tahsildar for Land Acquisition and others (AIR 1975 Kerala 27)** relying on an earlier decision of the Division Bench of that Court in Chandan Vydiar v. Chakkuti Vidyar (1969 Kerala L R 691) has stated that the proceedings for apportionment of compensation are in the nature of an interpleader suit and the parties to these proceedings are free to litigate in the ordinary way as in an ordinary suit to determine what their respective rights in respect of the amount of compensation or any portion thereof are. The proceedings being of civil nature, the parties certainly are required to plead their case and lead evidence in support of the same. The ordinary rule of pleadings that no amount of evidence can be looked into in support of a plea not taken ought to be followed in such cases as well. The respondents therefore, after pleading that the land belonged to the Comunidade were not entitled to lead evidence claiming that they were owners of the same. In other words, the respondents were not entitled to deviate from the plea taken. The respondents having filed a written statement duly verified and having claimed prescription

as against the Comunidade, were not entitled to depose contrary to the said pleadings and claim a right that they were the owners of the acquired property and that too without producing any documents of title. Any other view would create untold hardships to other parties who would not know as to what case they have to meet.

9. On behalf of the appellants, Shri Usgaonkar, the learned Senior Counsel, has submitted that the learned Reference Court ought to have adjudicated the plea of prescription raised by the appellants against the Comunidade since the Comunidade on one hand had not claimed the said compensation before the Land Acquisition Officer and on the other hand there was a clear acknowledgment by the Comunidade to the possession of the appellants' predecessor, the said Maria Paulacina on the face of the record of “Tombacao” (survey) and the Comunidade having not taken any action by way of a suit to evict the appellants from the encroachment made by them and which was recorded in the relevant documents in November, 1923. Indeed the appellants had produced three documents to support their claim to possession as encroachers or usurpers of the land of the Comunidade. The

first was a copy of a plan – Exh.A1 and two other analogous documents namely A2 and A3 being certificates issued by the clerk of the Comunidade. The learned Reference Court came to the conclusion that neither of the parties had proved their title to the property and the only question which was to be determined was to find out as to who was in possession of the acquired land. As far as the said plan Exh.A1 is concerned, the same showed that the appellants' grandmother was in possession of lote no.45 known as “Rumboleachem Contoleavelem Bhat”. The said plan was produced by the appellants with the consent of the respondents. We have no hesitation in our mind to hold that the said plan was a public document since it was prepared by the Government surveyors of the Directorate of Land Survey of the Government of Goa, Daman & Diu pursuant to the duties enjoined on them by the provisions of the Code of Comunidade, 1904 particularly Article 227 of the said Code. However, the said plan – Exh.A1 would show that the appellants' said grandmother was in possession of the said lote no.45 at a time when the said survey of the land of the Comunidade was conducted i.e. In November, 1923. What is recorded in the said plan is in tune with the case pleaded by the appellants that their said grandmother was in possession of the said property for

over 50 years. The said plan substantiates the case of the appellants but falsifies the case of the respondents that their grandfather/father was in possession of the said property from the year 1910. Aurora Barretto Xavier/Aw.1 who was examined in support of the case of the appellants, after setting out as to how they had continued to be in possession of the said property through cultivation done through their labourers and by giving the stone quarries existing therein for the extraction of stones, had ultimately admitted that the cultivation had stopped two or three years prior to liberation of Goa. In other words, her evidence was clear to the fact that the possession which the appellants had by way of being encroachers of the land of Comunidade continued till the year 1959 or thereabout and thereafter it is the respondents' father who came in possession of the same. The appellants' witness, the said Aurora Barretto Xavier admitted that the said Maruti Kamat was cultivating paddy in a portion of the said property and other portion he was cultivating vegetables. She also admitted that the said Maruti Kamat obtained a licence from the Municipality in the year 1970 for the construction of a veranda to the house she was occupying and constructed the same. She also admitted that the respondents also constructed a garage next to the said house in

order to keep their vehicles and that she had not take any action against the respondents either because the house was extended or the garage was constructed. She also admitted that the Inquiry Officer, City Survey had decided that the respondents were in possession of the said property. It appears that thereafter an appeal filed against the said order of the City Survey Officer has been dismissed by the Director, Settlement and Land Records by his judgment dated 14.2.2001 and it has been stated that a revision is now pending against the same before the Administrative Tribunal. The appellants' witness Shivanand Raikar also stated that besides his family, the family of Maruti Kamat were cultivating the paddy field to the extent of about 25 “kongios” (beds). Here it may be noted that it was not the case of the appellants' witness, the said Aurora Barretto Xavier that the family of Aw.2/Shivanand Raikar had at any time cultivated any portion of the acquired property. The evidence on record clearly showed that after the family of the appellants ceased to be in possession of the acquired property, it is the family of the respondents who have been in possession of the same till the time of its acquisition. The respondents had even produced paddy declarations in support of their cultivation. Shri Usgaonkar, the learned Senior Counsel has tried to point out

that the father of the respondents cultivated the paddy field till about the year 1972. However, it is not the case of the appellants that they resumed possession again after the cultivation of the paddy field was stopped by the father of the respondents. In fact, it appears that the appellants in the year 1970 or thereabout made an attempt to regain the lost possession by interfering by cutting a branch of “Shivon” tree which was resisted by the said Haridas Kamat resulting in proceedings being initiated under Section 145 of the Code of Criminal Procedure which were dropped at the request of both the parties. Thereafter the appellants have been completely passive and inert. If the respondents' father came in possession of the acquired property after the family of the appellants ceased to be in possession of the same, it is safe to presume and, as other evidence shows, that they continued to be in possession till the acquisition of the said property. In this context, we may refer to the case of **Ambika Prasad Thakur and others etc. v. Ram Ekbal Rai (dead) by his legal representatives and others etc.(AIR 1966 S.C. 605)** wherein the Supreme Court has stated that the presumption of future continuance is noticed in illustration (d) to Section 114 of the Indian Evidence Act, 1872 and that how far the presumption may be drawn both backwards

and forwards depends upon the nature of the thing and the surrounding circumstances. In this case, the learned Reference Court had rightly come to the conclusion after considering the evidence produced that it is the family of the respondents who were in possession of the acquired property at the time of acquisition and as we have indicated hereinabove the said possession came to be exercised by the family of the respondents after the family of the appellants ceased to be in possession of the same in the year 1959 or thereabout. The plea of prescription could not have been adjudicated in favour of the appellants, firstly because the Comunidade against which it was put forward was not a party to the proceedings and secondly because when the said plea was raised, the appellants had already ceased to be in possession of the property.

10. The next contention of Shri Usgaonkar, the learned Senior Counsel, is that the said possession of the respondents was permissive and this is evidenced by the declaration signed by the said Maria Paulacina, the father of the respondents and the father of Shivanand Raikar on 1.12.1942 – Exh.P13/J. There is no dispute that the said declaration was executed by the said parties before a Notary public and a copy of the same was

produced at Exh.P-13/J through the said Shivanand Raikar/Aw.2 without any objection from the respondents and the signature of the father of the respondents was identified by Haridas Kamat, and, that of his father by the said Shivanand Raikar. The relevant translated portion of the said document reads as follows:

> "that the first party Marilia is owner and holder of the property known as "Rumboleachem Contoleavelem Bhat" popularly known as "Fursamorod" situated at Aquem of Navelim, registered in the Land Registrar's Office of this judicial jurisdiction under no.18699, New series, that in the same property of the first party there are houses belonging to her, the first party in which are living as "mundcares" the second party and when they wished to leave the said property they would have no right whatsoever for the building material of the same houses and which has been acknowledged by the second parties. All this has been accepted by the parties."

11. There are several objections raised regarding this document by Shri Kakodkar, the learned Senior Counsel on behalf of the respondents. Firstly, Shri Kakodkar submits that the contents of the said document were not proved in as much as the said document at the most could have been produced by producing a certified copy which was also not produced and therefore the said document could not be relied upon at all. Shri Kakodkar further submits that the proof of signature on a document is not proof of truth of the contents of the document and in any event if there was an admission, the same could not confer any title on the said paternal grandmother of the appellants.

12. The said document is a declaration made by the said Maruti Kamat and his wife and Raghuvir Raikar and his wife and admittedly it was made before a Notary Public who in terms of Article (1) of Decree no.8373 of 1927, in force in this State, is a public Official nominated by the Government and whose duty interalia is to authenticate or legalise signatures on documents by means of acknowledgment as contemplated by Clause 6 of Article 1 of the said Decree. The said declaration having been made before a public Official certainly qualifies the description

of a public document given in Section 74(1)(iii) of the Indian Evidence Act, 1872. The contents of a public document are presumed to be true until the contrary is proved. In this context we may refer to the case of **P. C. Purushothama Reddiar v. S. Perumal (AIR 1972 S.C. 608)** wherein the Supreme Court, speaking through three learned Judges, has stated that once a document is properly admitted, the contents of that document are also admitted in evidence though those contents may not be conclusive evidence. The Supreme Court was dealing with certain Police reports and it was contended that the said reports were inadmissible in evidence as the Head Constables who had covered the meetings were not examined in the case and the Supreme Court stated that once the said reports were admitted, it was not open to the respondents to object to their admissibility. Admittedly, a copy of the said declaration was produced in land acquisition proceedings No.162/81 between the same parties and a xerox copy of same document was produced in this case through the said Shivanand Raikar/Aw.2 and signatures on the said document of Maruti Kamat was identified by the respondents' witness, the said Haridas Kamat and that of Raghuvir by his said son Shivanand/Aw.2. There is no doubt that the said document being a public document ought to have

been proved by production of a certified copy as contemplated by Section 65(f) of the Evidence Act, 1872, as contended. However, the respondents having not objected to the production of the xerox copy of the said document before the learned Reference Court , it is too late in the day now before this Court in appeal to contend that the said document ought to be discarded as it was not proved by production of a certified copy. Production of a certified copy relates to the mode of proving a document and as far as this aspect is concerned, the position of law is well settled by the Apex Court in the case of **R.V.E. Venkatachala Gounder v. Arulmigu Viswesaraswami & V.P. Temple and another ((2003) 8 S.C.C. 752)**. In that case, the Apex Court was dealing with two photo copies namely, Exh.A-30 and A-34 being a photo copy of the order passed by the Assistant Commissioner and a photo copy of the rent agreement executed between the appellant and the tenant, respondent no.2, respectively. In fact, Exh.30 was a photo copy of a certified copy of the decision given by the Charity Commissioner and it was tendered in evidence and marked as an Exhibit without any objection by the defendants. The Supreme Court stated that if only the tendering of the photo copy would have been objected to by the defendant, the plaintiff would have then and there sought for the leave of

the Court either for tendering in evidence a certified copy freshly obtained or else would have summoned the record of the other legal proceedings where the certified copy was available for perusal of the Court. The Supreme Court referred to the case of Roman Catholic Mission v. State of Madras (AIR 1966 S.C. 1457) and stated that there was no dispute with the proposition of law laid down in the said case, but the present case was one which called for the correct position of law being made precise and proceeded to state that ordinarily, an objection to the admissibility of evidence should be taken when it is tendered and not subsequently. The objections as to admissibility of documents in evidence may be classified into two classes: (i) an objection that the document which is sought to be proved is itself inadmissible in evidence; and (ii) where the objection does not dispute the admissibility of the document in evidence but is directed towards the mode of proof alleging the same to be irregular or insufficient. In the first case, merely because a document has been marked as “an exhibit”, an objection as to its admissibility is not excluded and is available to be raised even at a later stage or even in appeal or revision. In the latter case, the objection should be taken when the evidence is tendered and once the document has been admitted in evidence and marked as

an exhibit, the objection that it should not have been admitted in evidence or that the mode adopted for proving the document is irregular cannot be allowed to be raised at any stage subsequent to the marking of the document as an exhibit. The latter proposition is a rule of fair play. The crucial test is whether an objection, if taken at the appropriate point of time, would have enabled the party tendering the evidence to cure the defect and resort to such mode of proof as would be regular. The omission to object becomes fatal because by his failure the party entitled to object allows the party tendering the evidence to act on an assumption that the opposite party is not serious about the mode of proof. On the other hand, a prompt objection does not prejudice the party tendering the evidence, for two reasons: firstly, it enables the court to apply its mind and pronounce its decision on the question of admissibility then and there; and secondly, in the event of finding of the court on the mode of proof sought to be adopted going against the party tendering the evidence, the opportunity of seeking indulgence of the court for permitting a regular mode or method of proof and thereby removing the objection raised by the opposite party, is available to the party leading the evidence. Such practice and procedure is fair to both the parties. Out of the two types of objections,

referred to hereinabove, in the latter case, failure to raise a prompt and timely objections amounts to waiver of the necessity for insisting on formal proof of a document, the document itself which is sought to be proved being admissible in evidence. The Supreme Court therefore concluded that Exhs. A-30 and A-34 having been admitted in evidence, without any objection, the High Court had erred in holding that the said documents were inadmissible being photo copies, the original of which were not produced.

13. The learned Reference Court referring to the said document/declaration-Exh.Aw.13/J dated 1.12.1942 observed that it pertained to the said house under Chalta nos.15 & 16 which was not the subject matter of acquisition and therefore it was not necessary to decide whether the house was owned by Paulacina or by the respondents or whether it was occupied by the respondents and the said Raikar as mundkars. It is not the case of the appellants that the said Maruti Kamat and the said Raghuvir Raikar were inducted into the said house pursuant to the said declaration, and, in fact, it appears that they were residing in the said house even prior to 1.12.1942 when the said declaration was signed by the said three parties before the

Notary Public. It is not the case of the appellants that the said Maruti Kamat was allowed to enjoy the northern part of the property by virtue of the said declaration. Whether the respondents or for that matter the said Raghuvir Raikar would be in a position to deny their status as a licensee or mundkar or not because of the said declaration in the light of Section 116 of the Evidence Act is a matter with which were are not concerned with in this appeal. It is true that the said declaration also mentions that the said Maria Paulacina Eugenia de Quadros, the paternal grandmother of the appellants, is the “owner and holder of the property”, but the fact remains that by mere acknowledgment or admission by the said Maruti Kamat and Raghuvir Raikar the appellants' said paternal grandmother could not have been conferred any title of ownership to the acquired property. The said declaration does not at all show that the possession of the said Maruti Kamat in respect of the acquired property was permissive. At the most it may show that their possession in respect of the house was permissive. It is not the case of the appellants that after they lost the possession of the property in the year 1959 or thereabout, that they had permitted the said Maruti Kamat to enjoy the acquired property and the evidence clearly shows that after the said Maria Paulacina ceased to be in

possession of the acquired property, it is the said Maruti Kamat who came in possession of the same and not only that, in the year 1970 or thereabout even thwarted an attempt on the part of the appellants to resume the possession from him. This shows that the possession of Maruti Kamat was very much hostile to the possession of the family of appellants and certainly, it cannot be said to have been permissive as sought to be contended on behalf of the appellants, as far as the acquired property is concerned. We are, therefore, not inclined to accept that the said declaration dated 1.12.1942 is an indication that the possession of the said Maruti Kamat in respect of the acquired property was permissive in nature.

14. Compensation for land which is acquired can be paid to owners or to persons in possession of the same or even to persons who have some interest in the acquired land including an easement. Admittedly, the acquired land belonged to the Comunidade of Aquem who as owners of the same had not claimed the compensation payable. As far as the appellants are concerned, they had already lost the possession of the acquired property much before the same was acquired. It is the respondents who were in settled, continuous and peaceful

possession of the acquired property from the year 1959 or thereabout until the property was acquired from their possession. In this view of the matter, in our view, the decision of the learned Reference Court in ordering the payment of compensation to the respondents as they were in settled possession for a considerable length of time, could not be faulted.

15. We, therefore, find there is no merit in this appeal and consequently the same is hereby dismissed, with no order as to costs.

R. M. LODHA,J.

N. A. BRITTO,J.

/vpf.